

5. In April, 2003, a second opinion was rendered by ***, Ph.D. who did not diagnose Student with PDD-NOS. Dr. *** did not believe that Student was a child on the autism spectrum. *** diagnosed Student with some form of attention deficit disorder (ADD), a speech/language disorder, and ED (disruptive behavior disorder). (P. Ex. 1, pgs.30-52; R. Ex. Vol. I-2, pgs.1-23)
- 6.

Student's eligibilities continued to be ED, SLD, and SI. Student's behaviors were addressed through Student's modifications. Student was to receive speech twice weekly at 30 minutes each and 30 minutes of counseling 18 times per year. Counseling goals included social skills. Student almost completed Student's previous IEP goals and objectives in reading which were written on the third through sixth grade levels. Student was changed to the general education reading improvement class for the following year. IEPs were accepted in math, language arts, speech, and counseling. The Parent agreed to the decisions of the ARDC (P. Ex. 4; pgs. 187-204; R. Ex. Vol. I-33)

19. The student scored *** in reading and *** in math on the TAKS-M in the spring, 2008. (R. Ex. Vol. I-34)
20. The Parent was given a copy of procedural safeguards on November 3, 2008 and gave consent for the Student to be re-evaluated for speech. (R. Ex. Vol. I-36)
21. Beginning in October, 2008, the school counselor regularly checked the Student's assignment notebook. (T. Vol. III, pgs. 266-269)
22. For approximately six weeks during the Student's *** grade year, Student was erroneously assigned to a regular education mathematics class. (T. Vol. III, pgs. 272-273)
23. Due to parental concerns regarding the Student's academic progress in *** grade, a review ARDC

SLD in basic reading, and SI. The Student was reassigned to reading resource class since Student was struggling on all Student's tests in reading improvement class. IEPs were written for him in reading, language arts, math, and speech. The counselor recommended dismissal from counseling and recommended social skills class. The Parent wanted to wait on a decision regarding counseling until a final diagnosis was determined. Although there was no new counseling IEP, the schedule of services page reflected that the Student would continue to receive 30 minute counseling sessions, 18 times per year. Several modifications were put in place. The meeting ended in agreement. (R. Ex. Vol. I-45)

27. The District's April 6, 2009 Full Individual Evaluation (FIE) reflected that the Student's grade equivalent in math ranged from ***. Student's grade equivalent in reading and language ranged from *** (Tr. Vol. III, pg. 316)

28. One month later, a three year review ARDC was held Ap

40. At the beginning of the 2009-2010 school year, the District failed to provide the Student with 15 hours of homebound services. (R. Ex. Vol. III-102)
41. An AT assessment was completed in September, 2009. The evaluator recommended software and a laptop, Classmate Reader, hi-lighter tape, visual schedules and use of speech to text in Microsoft word, as well as training for the Student's educational support staff, as needed. (R. Vol. III-107)
42. The District completed a dyslexia assessment in September, 2009. As *** grader, the assessment indicated that the Student could read *** grade passages at a fluency of *** words per minute. Student's independent/instructional reading level was *** grade. Student scored *** on a nonsense word spelling test that was on an approximate *** grade level. (R. Ex. Vol. III-105)
43. In the fall, 2009, the District proposed counseling and in home training which was rejected by the Student's private counselor, Dr. ***. (P. Ex. 6, pg. 436-deposition cd; T. Vol. III, pgs. 280-281)
44. The October, 2009 auditory processing evaluation revealed that Student has an auditory processing disorder related to auditory decoding with signs of tolerance fading memory. An individual with auditory decoding problems show signs of difficulties with receptive language, developing a receptive vocabulary and understanding verbal concepts. Problem areas are in reading, word accuracy, sounding out words, phonics, and spelling. An individual with tolerance fading memory will show problems in

Statute of Limitations

In the second request for due process hearing, Petitioner requested an order that the one year statute of limitations does not apply as a result of the District's failure to provide copies of procedural safeguards at all required times. If a finding is made that the Parent was prevented from requesting a due process hearing because the District withheld information from the Parent that was required under 20 U.S.C. §§ 1411-1419, the Texas one year statute of limitations would not apply. 19 Tex. Admin. Code § 89.1151

A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents —

- (1) Upon initial referral or parent request for evaluation;
- (2) Upon receipt of the first State complaint and upon receipt of the first due process complaint under § 300.507 in a school year;
- (3) In accordance with the discipline procedures in §300.530(h); and
- (4) Upon request by a parent. 20 U.S.C. § 1415; 34 C.F.R. § 300.504.

Based on the evidence presented at hearing, I do not find that the District withheld information from the Parent that was required under the IDEIA. The JTJEfBT1 0 ;8(he)4()-9(I)13(0 10 0 1 445.0eeT1 445.0eeT1 445.0eeT1 44530

Development/Implementation of a Functional Behavior Assessment and Behavior Improvement Plan

During the relevant time period, the Student's behavior was not of such degree as to require a FBA or BIP. . Student

Appropriate Counseling Services

Counseling services were not provided after April 21, 2009, the date the Student stopped attending school. Prior to that time, the Student received appropriate counseling for Student's needs and progressed to such a degree that the counselor recommended dismissal and assignment to a social skills class in lieu of one-to-one counseling. Any failure to provide counseling through the end of the 2(e)41 0 0 6B03

Protection from Bullying by Other Students

The Parent believed that the Student was bullied by other students.

Are the Services Provided in a Coordinated and Collaborative Manner by the Key Stakeholders

For the first six weeks of the Student's *** grade year, Student was placed erroneously in a regular education math class in contravention of Student's IEP which called for special education math class. It was not until the Parent called attention to District staff that the mistake was discovered and corrected. During that time, Student's math IEP was not implemented.

From the beginning of Student's *** grade year and continuing through the 4th six weeks, Student was in a reading improvement class. Student's teacher did not know that Student was a special education student. Since she was not informed of Student's disabilities, she did not know that Student had several modifications and accommodations in place to be used in reading. Student's modifications included checking for understanding, positive reinforcement, setting defined limits where behavior is concerned, checking assignment notebook, oral directions, and providing correctly completed examples.

The Coop Special Education Director testified that the Parent wanted a FBA performed and a BIP developed, and the District saw no indicators of behavior that would trigger the FBA. The parent brought up the subject several times until Parent had finally worn us down. The FBA process began in early April, 2009 and three teachers completed teacher interviews. The process was not completed before the Student stopped attending school. The ARDC documents prior to the beginning of the FBA make no mention of an agreement to conduct the assessment.

When the 2009-2010 school year began, the District did not provide homebound services for approximately one week, or the equivalent of 15 hours. The September 10 ARDC acknowledged the lapse in services and was to prepare a proposal to address the issue within two weeks; however, at the time of hearing, the 15 hours had not been addressed.

In 2006, when the Student was screened for dyslexia services, the teacher indicated that Student appeared to have a hearing processing problem. There is no evidence that the teacher's concerns in 2006 were discussed or considered until the September 10, 2010 ARDC meeting when the committee agreed to have an audiology evaluation done.

After the Respondent started dyslexia services in the fall, 2010, Student's teachers were changed. As a result, Student did not receive dyslexia services for a week. To date, counseling services have not begun, albeit Petitioner's private counselor's reticence to cooperate with planning Student's program has been a factor.

Failure to communicate and collaborate among school staff can contribute to a denial of FAPE. *Houston Independent School District v. Juan and Sylvia P.* 566 F.3rd 459 (5th Cir. 2009). The third prong of the test for FAPE was not satisfied.

Are Positive Academic and Non-Academic Benefits Demonstrated

The Student made passing grades during the applicable time period, and was promoted from grade to grade. District staff testified that Student had made academic progress. Although Student's math skills reflect improvement, Student remains at the *** and *** grade level in reading and language skills when given standardized achievement tests. The evidence shows that Student can read on the *** grade level, particularly when it is something that Student really enjoys. Student p

from the date of this Decision: 1.) Documentation demonstrating that the Decision has been implemented; or 2.) If the timeline set by the Hearing Officer for implementing certain aspects of the Decision is longer than 10 school days, the district's plan for implementing the Decision within the prescribed timeline, and a signed assurance from the superintendent that the Decision will be implemented.

Finding that the public welfare requires the immediate effect of this Final Decision, the Hearing Officer makes it effective immediately.

SIGNED on the 31st day of January, 2010.

Brenda Rudd
Special Education Hearing Officer
For the State of Texas

Citation: 34 C.F.R. § 300.320

Issue Number 7: Whether the District failed to address parent training and in-home training despite requests from the Parent

Held: For the School District

Citation: 34 C.F.R. §300.34

Issue Number 8: Whether the District failed to implement the Student's IEP, including the assignment notebook, behavior interventions, and to begin agreed-upon dyslexia services at the beginning of the 2008-2009 school year

Held: For the School District

Citation: 34 C.F.R. §300.320

Issue Number 9: Whether the District failed to incorporate the autism supplement into the Student's services

Held: For the School District

Citation: 34 C.F.R. § 300.8

Issue Number 10: Whether the District failed to appropriately train teachers and staff who worked with the Student

Held: For the School District

Citation: 34 C.F.R. §300.156

Issue Number 11: Whether the District failed to provide appropriate counseling services to the Student

Held: For the School District

Citation: 34 C.F.R. § 300.34

Issue Number 12: Whether the District failed to provide Extended School Year services

Held: For the School District

Citation: 34 C.F.R. § 300.106

Issue Number 13: Whether the District failed to assess and address the Student's assistive technology needs

Held: For the School District

Citation: 34 C.F.R. §300.324

Issue Number 14: Whether the District disallowed the Parent from visiting the Student's classroom

Held: For the School District

Citation: 34 C.F.R. § 300.507

Issue Number 15: Whether the District failed to give progress reports in the Student's IEP goals and objectives at least as frequently as regular education students received grade reports

Held: For the School District

